

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3
4 ZEPHANIAH BULLOCK,

5 Plaintiff,

6 v.

7
8 WARDEN NEVENS, *et al.*,

9 Defendants.

3:14-cv-00195-RCJ-VPC

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

10
11 This Report and Recommendation is made to the Honorable Robert C. Jones, United
12 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28
13 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is plaintiff's motion for a temporary
14 restraining order (#34). Having thoroughly reviewed the motion and other papers, the court
15 recommends that plaintiff's motion be denied.

16 **I. HISTORY & PROCEDURAL BACKGROUND**

17 Zephaniah Bullock ("plaintiff"), who proceeds in this action *pro se*, is an inmate in the
18 custody of the Nevada Department of Corrections ("NDOC") and is currently incarcerated at Ely
19 State Prison ("ESP"). Plaintiff asserts claims under 42 U.S.C. § 1983 for alleged sexual
20 misconduct by a High Desert State Prison ("HDSP") corrections officer (#1). Plaintiff further
21 alleges that several HDSP officials were deliberately indifferent to his accusations regarding the
22 misconduct. (*Id.* at 2.) In the instant motion, plaintiff seeks a temporary restraining order against
23 various NDOC and ESP officials—none of whom is a party—as well as a transfer to another
24 facility. (#34 at 2.)

25 **II. DISCUSSION**

26 A temporary restraining order should be limited to carrying out its "underlying purpose of
27 preserving the status quo and preventing irreparable harm just so long as is necessary to hold a
28 hearing, and no longer." *Granny Goose Foods v. Board of Teamsters & Auto Truck Drivers*, 415

1 U.S. 423, 439 (1974). Injunctive relief may be granted if plaintiff shows: (1) a likelihood of
2 success on the merits; (2) likelihood of irreparable harm without injunctive relief; (3) the equities
3 balance in his favor; and (4) the injunction is in the public interest. *Winter v. Natural Res. Def.*
4 *Council, Inc.*, 555 U.S. 7, 20 (2008); *Fyock v City of Sunnyvale*, 779 F. 3d 991, 995-96 (9th Cir.
5 2015).¹

6 Preliminary injunctive relief is an “extraordinary and drastic remedy.” *Munaf v. Geren*,
7 553 U.S. 674, 689-90 (2008) (internal citations omitted). A mandatory injunction that provides
8 relief “well beyond simply maintaining the status quo” is disfavored and should be denied by the
9 court “unless the law and the facts clearly favor the moving party.” *Stanley v. Univ. of S. Cal.*, 13
10 F.3d 1313, 1320 (9th Cir. 1994) (internal quotations omitted). Courts have additional
11 considerations concerning injunctive relief sought in inmate civil rights actions. The Prison
12 Litigation Reform Act (“PLRA”) requires the relief be “narrowly drawn, extend no further than
13 necessary to correct the harm” found, and “be the least intrusive means necessary to correct that
14 harm.” 18 U.S.C. §3626(a)(2).

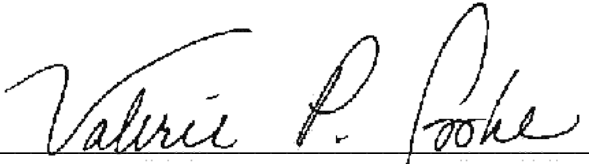
15 Restraining orders may bind only “parties defendant in a suit” and individuals “in active
16 concert” with those defendants. *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100, 112
17 (1969) (citing Fed. Rule. Civ. Proc. 65(d)) (finding an injunction improper when issued against a
18 nonparty unless he or she “participated” with defendants). A federal court may not “attempt to
19 determine the rights of persons not before the court” and thus, it must “tailor the injunction to
20 affect only those persons over which it has power.” *Zepeda v. U.S. Immigration & Naturalization*
21 *Serv.*, 753 F.2d 719, 727 (9th Cir. 1983) (internal quotations omitted). Further, the Supreme
22 Court has recognized that preliminary injunctive relief must be of the “same character as that
23 which may be granted finally” and may not relate to “matter[s] lying wholly outside the issues in
24 the suit.” *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945).

27 ¹ The standard applied for preliminary injunctive relief also governs temporary restraining orders.
28 *V’Guara v. Dec*, 925 F. Supp 2d 1120, 1123 (D. Nev. 2013).

IV. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that plaintiff's motion for a temporary restraining order (#34) be **DENIED**.

DATED: July 2, 2015.


UNITED STATES MAGISTRATE JUDGE